

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3945 OF 2016

Krishna Hari Godambe	]
Aged about 35 years,	]
Through his wife Mrs. Shubhangi	]
Krishna Godambe, Residing at	]
Namrata Chawl, Lane No.1,	]
Near Jethwan Buddh Vihar,	]
Jalprabhat Ramabai Colony,	]
Ghatkopar (East), Mumbai-400 077	]
(At present detained at Thane	]
Central Prison, Thane)	].. Petitioner

Vs.

1. The Commissioner of Police,	]
Opposite Crawford Market,	]
Mumbai	]
	]
2. The State of Maharashtra	]
Through the Secretary,	]
Home Department	]
(Preventive Detention)	]
Govt. of Maharashtra	]
Mantralaya, Mumbai -400 032	]
	]
3. The Superintendent,	]
Nashik Road, Central Prison,	]
Nashik	]
	]
4. The Superintendent	]
Thane Central Prison, Thane	].. Respondents

....
Mr. Nitin Sejpal Advocate along with Ms. Jyoti Joshi Advocate
for Petitioner

Mr. J.P.Yagnik A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
REVATI MOHITE DERE, JJ.**

DATED : APRIL 27 / MAY 03, 2017

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.]:

1 The petitioner / detenu – Krishna Hari Godambe has preferred this petition questioning the preventive detention order passed against him on 7.10.2016 by the Respondent No.1 i.e. Commissioner of Police, Mumbai. The said detention order has been passed in exercise of powers under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-Marketing of Essential Commodities Act, 1981 (Mah. Act No. LV of 1981) (hereinafter referred to as “MPDA Act”) as the detenu is a “dangerous person” whose activities are prejudicial to the

maintenance of public order. The detention order along with grounds of detention and other documents were served on the detenu on 7.10.2016.

2 Perusal of grounds of detention (Annexure-A) shows that the detention order is based on 3 registered cases and 2 incamera statements. The first registered case is CR No. 530 of 2015 dated 15.11.2016 of Dharavi Police Station, Mumbai. The incident relating to the said CR is dated 14.11.2015. The said case is under Sections 326, 504, 506 read with Section 34 of IPC and Section 37(1)(a) read with Section 135 and 142 of the Maharashtra Police Act. The second registered case is CR No. 15 of 2016 of Dharavi Police Station. The incident in the said CR took place on 8.1.2016. This CR is under Sections 386, 324 read with Section 34 of IPC. The third registered case is Special LAC No. 58 of 2016. Incident in the said case occurred on 7.6.2016. In addition, reliance is placed on statements of two incamera witnesses "A" and witness "B". The incident

relating to witness “A” took place in the last week of May, 2016 and incident relating to incamera witness “B” took place in the third week of June, 2016. The statements of incamera witnesses “A” and “B” were recorded on 21.6.2016 and 25.6.2016 respectively.

3 When the matter was last heard the petitioner had raised five grounds i.e. ground nos. (xvi), (xiv), (xvii), (xiii) and (xi). After hearing both the parties, all these grounds were dealt with in detail by order dated 3.3.2017 and all the grounds were negatived by reasoned order. Thereafter, the learned counsel for the petitioner submitted that in view of the reply in paragraph 8 of the affidavit filed by the detaining authority which was affirmed on 13.1.2017, it appears that there is delay in issuance of order of detention and the same has not been properly explained by the detaining authority, therefore, leave was sought to amend and add the ground that “there is delay in issuance of the detention order and the same has not been

properly explained by the detaining authority, hence, the detention order is vitiated”.

4 At that time, the learned A.P.P. in reply has submitted that since no specific ground was raised in relation to delay in issuance of the detention order, he had not filed a detailed affidavit explaining the delay in issuance of the detention order and if such ground is raised, he will file additional affidavit explaining the time taken to issue the order of detention. By order dated 3.3.2017, in the interest of justice, leave to amend as prayed for, was granted. It was made clear that leave was granted only to add one ground i.e. “delay in issuance of detention order”. Thereafter the amended ground i.e. ground “(xiii)(A1)” was added. Learned A.P.P. has also filed detailed replies of the detaining authority to the same, wherein delay has been explained.

5. As stated earlier 5 grounds were negatived by order dated 3.3.2017. For the sake of convenience, we are reproducing below the relevant part of the order dated 3.3.2017 wherein the said 5 grounds i.e ground (xi), (xiii), (xiv), (xvi) and (xvii) were turned down after they were dealt with in detail.

5(a) Though a large number of grounds are raised in this petition, the learned counsel for the petitioner categorically submitted that he is going to press only ground nos. (xvi), (xiv), (xvii), (xiii) and (xi) and no other ground, hence, we proceed to consider the said grounds.

5(b) The first ground raised is in relation to the two incamera statements. As far as the two incamera statements are concerned, the first ground which has been raised in relation to the same is ground (xvi). The said ground briefly stated is that the petitioner was not supplied the verification of the incamera statements which was done by the Assistant Commissioner of Police which has resulted in violation of his

constitutional right under Article 22(5) of the Constitution of India on the ground of which, the detention order is vitiated. This ground has been replied by the detaining authority in paragraph 19 of the affidavit-in-reply. On perusal of the said reply, we find that there is no averment therein about furnishing of verification by the Assistant Commissioner of Police of the incamera statements to the detenu. The learned A.P.P. has produced before us the original incamera statements and we find that the Assistant Commissioner of Police (ACP) has put an endorsement on both the incamera statements that he has verified the incamera statements and found them to be true and genuine. However, it is noticed that in the copies of incamera statements of witnesses "A" and "B" which have been supplied to the detenu, there is no endorsement of the ACP to show that the incamera statements were verified. As stated earlier, the original incamera statements show that both incamera statements were verified by the ACP but this verification by the ACP, has not been furnished to the detenu.

5(c) Mr. Sejpal, the learned counsel for the petitioner submitted that it was mandatory for the detaining authority to furnish the verification of the incamera statements by the ACP to the detenu and non-supply of the same affects the right of the petitioner to make an effective representation under Article 22(5) of the Constitution of India and thus, the order of detention is liable to be set aside. In this connection, Mr. Sejpal relied firstly on the judgment of the Division Bench of this Court in ***Shubhangi Sawant Vs. R.H. Mendonca*** reported in ***2001 ALL MR (Cri.) 68***. This was a case where the petitioner was given only the copies of incamera statements, without verification made by the Assistant Commissioner of Police. The detaining authority had taken into consideration the incamera statements of two witnesses which were recorded by Senior Police Inspector and which were verified by the Assistant Commissioner of Police, however, the copies of the incamera statements supplied to the detenu did not contain the verification made by the Assistant Commissioner of Police. In

these circumstances, this Court held that it had resulted in violation of Article 22(5) of the Constitution and, therefore, the detention order was vitiated. The said judgment was relied on and applied by another Division Bench of this Court (Coram: Sahai and S.K. Shah, JJ.) in ***Criminal Writ Petition No. 1649 of 2001*** in the case of ***Joginder Prakash Piwal Vs. M.N. Singh and others***, decided on 7.2.2002. In the said case also the copies of the incamera statements of witnesses supplied to the detenu did not contain verification done by the ACP. Consequently, it was held that there was violation of Article 22(5) of the Constitution and the detention order was vitiated. Mr. Sejpal further placed reliance on the decision of this Court in the case of ***Mehmood Shahjad Khan @ Pathan Vs. The State of Maharashtra***, reported in ***2013 ALL MR (Cri.) 3349 : 2014(4) Bom.CR (Cri.) 509***. Mr. Sejpal pointed out that in this case also the detenu was supplied with the copies of the incamera statements of two witnesses without being supplied the verification done by the ACP. Mr. Sejpal submitted that in

these circumstances, it was held that the right of the detenu to make an effective representation was violated and hence, the detention order was set aside.

5(d) The learned A.P.P. pointed out that the present order of detention has been made on five grounds i.e. two incamera statements and three registered cases i.e. CR No. 530 of 2015 dated 15.11.2016 of Dharavi Police Station, Mumbai. The said case is under Sections 326, 504, 506 read with Section 34 of IPC and Section 37(1)(a) read with Section 135 and 142 of the Maharashtra Police Act. The second CR is CR No. 15 of 2016 of Dharavi Police Station. This CR is under Sections 386, 324 read with Section 34 of IPC. The third case is Special LAC No. 58 of 2016. Incident in the said case occurred on 7.6.2016. He submitted that assuming that the two incamera statements cannot be relied upon on account of non furnishing of the verification of the incamera statements, Section 5-A of the MPDA Act would operate and these two incamera statements

would be excluded from consideration, however, the three CRs i.e. (1) CR No.530 of 2015, (2) CR No. 15 of 2016, and (3) Special LAC No. 58 of 2016, would remain. Thus, it can be said that the detention order has been issued on three grounds i.e. on the aforesaid three CRs. and on these three grounds, the detention order would sustain.

5(e) In support of the above contention, the learned A.P.P. placed reliance on the decision of the Division Bench of this Court in ***Smt. Gobibai Ghanavat Vs. State of Maharashtra and others***, reported in ***2003 ALL MR (Cri.) 406***. In the said case also similar situation had arisen and similar arguments were advanced that as the verification by the ACP of the incamera statements was not furnished to the detenu the detenu's right to make an effective representation was violated and thus, the detention order was vitiated. In ***Smt. Gobibai (supra)***, this Court has observed as under:

"13. In our view, with the introduction of Section 5A it cannot be disputed that even if some of the grounds fail on account of being vague, non-existent,

non-relevant or not connected with such person or is rendered invalid for any other reason, still the order cannot be deemed to be invalid or inoperative if the same can be supported on the remaining ground or grounds. The impugned order was passed under Section 3(2) of the Act, which can be passed if the detaining authority is satisfied that it is necessary to do so in case the detenu is acting in any manner prejudicial to the maintenance of public order which is defined in Section 2 of the Act."

5(f) Thereafter the learned A.P.P. placed reliance on the decision of the Supreme Court in the case of ***State of Uttar Pradesh and another Vs. Sanjai Pratap Gupta alias Pappu and others*** reported in **(2004) 8 SCC 591**. In the said decision, the Supreme Court observed that section 5-A of the National Security Act was introduced to take care of the situation when one or more of the grounds can be separated from the other grounds for justifying detention. It may be stated that Section 5-A of MPDA Act and NSA Act are *pari materia*.

In ***Attorney General for India V. Amratlal Prajivandas*** reported in **(1994) 5 SCC 54 : 1994 SCC (Cri.) 1325**, it was observed that where the detention order is based

on more than one ground, by a legal fiction it would be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent one. In that case the Constitution Bench was considering scope of Section 5-A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short "the COFEPOSA Act") which is *pari materia* with Section 5-A of the MPDA Act. In the said case it was held that grounds can be severed in view of Section 5-A and the detention order can be sustained on the remaining ground/s. In view of the factual position analysed, the inevitable conclusion is that Section 5-A is applicable to this case and as in the present case, the detention order is based on three CRs and two incamera statements, it can be said that by legal fiction, it would be deemed that there are five orders of detention as there are five separate grounds on which the detenu has been detained. Thus, even if two grounds i.e. grounds relating to incamera statements are excluded from consideration, three

grounds still remain i.e. CR No. 530 of 2016, 15 of 2016 and LAC 58 of 2016. It may also be stated that it is observed in the case of **Shubhangi Sawant, Joginder Prakash Piwal & Mehmood Shahjad Khan (supra)**, that the point of severability under Section 5-A of the MPDA Act was not raised by the learned APP and hence, it did not arise for consideration. However, in the present case the learned A.P.P. has specifically raised the point of applicability of Sec. 5-A and we are of the opinion that Sec. 5-A would fully apply in the facts of the present case.

5(g) Thereafter as far as the two incamera statements are concerned, Mr. Sejpai raised ground (xiv). In the said ground, it is stated that incamera statements should not have been relied upon by the detaining authority to issue the order of detention as the incidents therein do not affect “public order” and the incidents therein are stale, they are false, fabricated etc. However, in view of the fact that in earlier paragraphs, it has

been observed by us that we are not inclined to rely on the incamera statements, we do not feel it necessary to deal with this ground. Thereafter Mr. Sejpal raised ground (xvii) in relation to incamera statements. Various contentions are raised in this ground in relation to the two incamera statements. However, we have already observed earlier that the incamera statements are being excluded from consideration, hence, it is not necessary to deal with this ground as it is redundant.

5(h) Thereafter, Mr. Sejpal raised ground (xi). This ground is in relation to the first CR. He submitted that as far as the first CR i.e. CR No. 530 of 2015 is concerned, it does not affect “public order”, hence, it could not have been relied upon by the detaining authority to pass the detention order. The facts relating to CR No. 530 of 2015 are that the complainant had lodged a case against the detenu and his associates. The detenu and his associates threatened the complainant to

withdraw the said criminal case. However, the complainant did not listen to them. On 13.11.2015 at about 1.00 a.m. when the complainant was on his way home, he met his friend Selva. They went upto the place inside the compound of the society. The complainant at the said place noticed the detenu and his associates glaring at him. The complainant questioned the detenu and his associates why they were doing so ? Due to this, detenu and his associates abused the complainant. The complainant also abused the detenu. The complainant then started proceeding inside the society building. The complainant suspected that the detenu and his associates were following him to assault him, hence, the complainant attempted to run away. On this, the detenu pulled the complainant back and dealt a blow with "paver-block" on the left side of face of the complainant and also on the head of the complainant. Someone hit the complainant with hard substance on the back. The complainant fell down and became unconscious. Thereafter, the complainant lodged F.I.R.

5(i) In relation to this incident, Mr. Sejpal reiterated that the incident does not affect “public order”. The incident therein only concerns one private individual i.e. the complainant. Mr. Sejpal submitted that looking to the facts relating to CR No. 530 of 2015, it cannot be said that it affects public at large and the act of the detenu was such that it affected the “public order”. We find much merit in this submission because from the facts pertaining to CR No. 530 of 2015, it is seen that the act of the detenu did not affect the even tempo of life of the society at large or even a section of the society but it was only limited to one private individual. There was no disturbance of public order. The incident occurred on account of previous enmity between the complainant and the detenu and there was no impact of this incident on society in general. Thus, it cannot be said that this incident affects “public order”. However, as stated earlier, the order of detention in the present case, has been made on 5 grounds i.e. 3 registered cases and 2 incamera statements.

Even if the 2 incamera statements and this CR i.e. CR No.530 of 2015, are excluded from consideration, the incidents relating to two registered cases remain i.e. CR No. 15 of 2016 and LAC 58 of 2016.

5(j) Thereafter, Mr. Sejpai raised ground (xiii). He submitted that after applying provisions of Section 5-A only 2 cases remain i.e. CR No. 15 of 2016 and LAC 58 of 2016. He submitted that the incident relating to LAC 58 of 2016 is not such that it affects “public order”. Thus, he submitted that if the incident relating to LAC No. 58 of 2016 is excluded from consideration as it does not affect “public order”, only CR No. 15 of 2016 would remain. He submitted that only on the basis of a single solitary incident relating to CR No. 15 of 2016, it cannot be said that the detenu is a “dangerous person”. He submitted that the detention order in the present case, has been passed against the detenu because he is a “dangerous person” as visualized under the provisions of MPDA Act. In

which case, it would be necessary to see Section 2(b-1) which defines “dangerous person”. As per this section, “dangerous person” means a person, who either by himself or as a member or leader of a gang, **“habitually commits”**, or attempts to commit or abets the commission of any of the offences punishable under Order XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959 (LIV of 1959).

5(k) Thus, a perusal of Section 2(b-1) would show that if the person singly or as a member or a leader of a gang **“habitually commits”** or attempts to commit or abets the commission of any offence punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act, he would be a “dangerous person” in terms of Section 2(b-1) of the MPDA Act. Just as a single swallow does not make a summer a solitary act, does not constitute a habit. Thus for a person to fall within the definition of “dangerous person” there have to

be at least two acts in which he has indulged, which acts affect “public order”. In relation to the contention raised by Mr. Sejpal, we would like to go into the incident relating to LAC No. 58 of 2016. It may be stated at this stage that Mr. Sejpal, as far as CR No. 15 of 2016, does not dispute that the incident therein affects “public order”. Thus, we now proceed to consider the facts relating to LAC No. 58 of 2016.

5(l) The facts relating to LAC No. 58 of 2016 are that the complainant Police Head Constable Navadkar in LAC 58 of 2016 states that on 7.1.2016 at mid-night i.e. 00.30 hours, he along with 7 police personnel reached Priyanka Bar while they were patrolling. There they received information that three persons armed with swords, sickles etc. were roaming and terrorizing local people and due to their violent act, people were running helter skelter, therefore, police party reached the spot and found the detenu and his associates armed with swords and sickle like weapons. They were shouting at the top of their

voice and rushing at people and letting loose a reign of terror over there. On spotting the police, the detenu and his associates made efforts to run away, however, they came to be apprehended. The detenu was found in possession of a sword which was 79" in length. Both the associates of the detenu were found in possession of sickles.

5(m) To support the contention that the incident relating to LAC No. 58 of 2016, did not affect "public order" and cannot be taken into consideration, Mr. Sejpal placed reliance on a decision of this Court in the case of ***Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and others*** reported in ***2005 ALL MR (Cri.) 28***. In the said case, while two constables were on patrolling duty, they noticed the detenu and his associates whispering amongst themselves. By listening carefully to the discussion of the detenu and his associates, they learnt that the detenu and his associates had hatched a plan to commit an offence of dacoity at Kamal Art

Jewellers in Mulund and some of the detenu's associates were waiting at that place. One of the constables requested for additional police help and they reached Kamal Art Jewellers. In the meanwhile, the detenu and his associates also reached the spot i.e. Kamal Art Jewellers. They went near the two associates who were waiting for them. They had some discussion among themselves. Then the detenu and his associates started walking towards Kamal Art Jewellers. Immediately the police team rushed towards the detenu and his associates and surrounded them. On sensing the presence of police, the detenu and his associates started running away. Police team chased them and caught the detenu and his three associates and the detenu came to be apprehended. The detenu was found in possession of a revolver. Some weapons were found with his associates. It was submitted that the said incident did not affect "public order". The Court in paragraph 5 observed that it was inclined to agree with the learned counsel for the detenu that the incident did not affect "public

order". It was further observed that there is no material on record to indicate that on account of the incident, a reign of terror was created in the vicinity and the even tempo of life of the society was disturbed. However, as far as the present incident pertaining to LAC No. 58 of 2016 is concerned, it is seen that the police received information that three persons armed with swords and sickles were roaming and terrorizing the local people and due to their violent act, people were running helter skelter. When the police party reached the spot, they found the detenu and his two associates armed with swords and sickle like weapons. The detenu and his associates were shouting at the top of their voice and rushing at people and a reign of terror was created over there. This clearly shows that the incident affected "public order" as a reign of terror was created by the detenu and his associates at the spot. They were rushing at people with weapons in their hands which created a feeling of terror in the minds of the people at the spot. Thus, this incident had clearly affected "public

order”.

5(n) Thereafter, Mr. Sejpal drew our attention to further observation in paragraph 5 of the decision in the case of ***Austin William Luis Pinto (supra)***. He pointed out that in the said case, it is observed that admittedly there was no material before detaining authority in the form of statements of independent persons stating that on account of this incident, there was a reign of terror created in the vicinity at large and the even tempo of life of the society was disturbed. Mr. Sejpal placed great emphasis on the fact that there was no statement of an independent witness. He submitted that in the present case also, there are no statements of independent persons to show that a reign of terror was created in the vicinity and on account of which, the even tempo of life of the society was disturbed. On reading paragraph 5 and the decision as a whole, it can be seen that the observation made that admittedly there was no material before the detaining

authority in the form of statements of independent persons stating that on account of this incident, there was a reign of terror created in the vicinity and the even tempo of life of the society was disturbed, was made in view of the fact that there was no material in the said case to show that a reign of terror was created or that the even tempo of life of the society was disturbed. However, in the present case, there was ample material before the detaining authority that the even tempo of life of the society was disturbed and the detenu and his associates had created a reign of terror in the vicinity. The observation relied upon by Mr. Sejpal has to be read as a whole in the context of the facts relating to the incident as a whole in the said case. Thus, the observations relating to independent witnesses cannot be read out of context and they have to be read in the context of the facts of the said case. The facts relating to the incident in ***Austin Pinto (supra)*** and the facts to LAC No. 58 of 2016 are entirely different. In the case of ***Austin Pinto***, there was no material to show that the incident

affected “public order” whereas in the present case, there is sufficient material on record to indicate that on account of the said incident, a reign of terror was created in the vicinity and the even tempo of life of the society was disturbed. There is no reason to disbelieve the evidence or statements of police officers. Just because they are police officers, it does not mean that their statements should not be taken into consideration. The Supreme Court in the case of **Ahir Raja Khima Vs. State of Saurashtra** reported in **AIR 1956 SC 217** observed as under:

“The presumption that a person acts honestly applies as such in favour of a police officer as in other persons and it is not a judicial approach to distrust or suspect him without good ground thereof. Such an attitude could do neither credit to the magistrate nor to the public. It can only run down the prestige of the public administration.”

5(o) It does happen that in some cases there are only police witnesses but it does not mean that just because they are police witnesses, the accused therein cannot be convicted or the detention order cannot be issued on the incident which has been stated by the police personnel. As stated earlier, the Supreme Court has in relation to police witnesses in the case of **Ahir Raja Khima (supra)**, also observed that “the presumption that a person acts honestly applies as such in favour of a police officer as in other persons and it is not a judicial approach to distrust or suspect him without good ground thereof. Such an attitude could do neither credit to the magistrate nor to the public. It can only run down the prestige of the public administration”. We are respectfully bound by the decisions of the Supreme Court. Thus, looking to the facts relating to LAC 58 of 2016, we are of the opinion that it certainly affects “public order”. We therefore, fail to appreciate the contention raised by the learned counsel for the petitioner that the satisfaction of the detaining authority that the detenu is a

“dangerous person” is based only upon a solitary incident that is CR No. 15 of 2016 as only that incident affects “public order”. In our opinion, as the incidents relating to LAC 58 of 2016 and CR 15 of 2016 clearly affect maintenance of “public order” it cannot be said that the detention order is based on a solitary incident. There are two incidents i.e. LAC 58 of 2016 and CR No. 15 of 2016 which show that the test of repetitiveness or continuity of activities of the detenu is fully satisfied and the satisfaction holding the detenu to be a “dangerous person” is not vitiated in any manner. The contention of the learned counsel for the petitioner in this regard, therefore, stands rejected.

5(p) For the sake of convenience, we shall refer to the incident relating to CR No. 15 of 2016. In the said case, on 8.1.2016 the complainant returned home at 10.30 p.m.. The detenu made a call on the cell phone of the complainant and asked him to come down. When the complainant came down,

the detenu threatened the complainant and asked him to give him Rs.10 lakhs. The complainant asked the detenu why he should give him Rs.10 lakhs ? Whereupon, the associate of the detenu caught him from behind and hugged him and the detenu smashed Mc'Donalds liquor bottle on the head of the complainant. The complainant sustained bleeding injury on his head. As there was bleeding, some people rushed forward to save him. On seeing those persons, the detenu raised bottle in their direction and loudly shouted that if they come forward to save the complainant, he would not leave them. Two of the associates of the detenu also raised glass bottles towards the people to attack them with the same. Due to fear of the detenu and his associates, the people in the locality got terrified and ran helter skelter. Residents closed doors of their houses. Thus, this shows that "public order" was certainly disturbed on account of the incident relating to CR No.15 of 2016. The incident was such that it affected the even tempo of life of a section of the society. It is the degree of disturbance

and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to breach of “public order”. Applying this principle to the facts of the present case, we find that the activities of the detenu in relation to the CR No. 15 of 2016 and LAC 58 of 2016 are such that they affected “public order”.

5(q) The learned A.P.P. submitted that CR No.15 of 2016 pertains to an act of extortion and acts of extortion disturb “public order”. In support of his contention, he has placed reliance on paragraph 5 of the decision of the Supreme Court in the case of **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat**, reported in **AIR 1999 SC 2197**. The relevant portion thereof reads as under:

“ It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of

a locality which determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to breach of “public order”. Applying the ratio of the aforesaid decision to the facts of the present case, we find that the activities of the detenu by trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money to drag them and torture them on public road undoubtedly affected the even tempo of life of the society and, therefore such activities cannot be said to be a mere disturbance of law and order.”

5(r) This Court in the decision in the case of **Zebunissa Vs. M.N. Singh** reported in **2001 (3) Mh.L.J. 365** has observed that the acts of extortion disturb public order can no longer be disputed. In the decision in the case of **Amin Mohammed Qureshi Vs. Commissioner of Police, Bombay**, reported in **1994 Cri.L.J. 2095**, the detenu was indulging in crimes like robbery, extortion and criminal intimidation. The Supreme

Court held that these activities affected the maintenance of public order. Similar view was taken in ***Prabhakar Shetty Vs. S. Ramamurthy*** reported in **1993 (2) B.C.R. 3** and ***Sunil Patil Vs. Satish Sahney and others*** reported in **1996(3) All M.R. 426**. Thus, applying the ratio of the aforesaid decisions to the incident relating to CR No. 15 of 2016 it can be said that the said incident affects public order. The detention order can be passed under MPDA Act on the ground that a person is a “dangerous person” on the basis of two incidents. As observed earlier that the two incidents relating to CR No. 15 of 2016 and LAC 58 of 2016 are such that they affected “public order”, hence, the detention order can be sustained on the basis of these two incidents. Thus, we find no merit in the submission of the learned counsel for the petitioner.

5(s) At this stage, the learned counsel for the petitioner stated that he does not wish to urge any other ground in this petition, however, he submitted that in view of the reply in

paragraph 8 of the affidavit filed by the detaining authority which was affirmed on 13.1.2017, it appears that there is delay in issuance of detention order and the same has not been properly explained by the detaining authority. The learned counsel for the petitioner therefore, seeks leave to amend and add the ground that “there is delay in issuing the detention order and the same has not been explained properly by the detaining authority, hence, the detention order is vitiated”.

6 We have reproduced above from paras 5(a) to 5(s), the grounds which were raised and negatived. Now we proceed to deal with the new ground raised by way of amendment i.e ground (xiii). This ground mainly deals with delay in issuance of detention order. In relation to this ground, Mr. Sejpal submitted that the incamera statements of the witnesses were recorded on 21.6.2016 and 25.6.2016. They were verified by the Assistant Commissioner of Police on 27.6.2016, however, the proposal was sent only after delay of

25 days i.e. the proposal was sent on 20.7.2016. He submitted that there is no explanation for this delay. Thereafter, he submitted that the papers were placed before the detaining authority and the detaining authority received the proposal on 22.8.2016 and the detention order has been issued on 7.10.2016 i.e. after a delay of 1½ month. Mr. Sejpal submitted that the delay in passing the order of detention has vitiated the order of detention. He submitted that the period from verification of the incamera statements which was done on 27.6.2016 till the date when the detention order was issued on 7.10.2016, has not been satisfactorily explained and hence, the detention order is vitiated. In support of his contention, Mr. Sejpal placed reliance on the decision of the Supreme Court in the case of **Pradeep Nilkantha Paturkar Vs. S. Ramamurthi and others** reported in **1993 S.C.C. (Cri.) 392**. He pointed out that in **Pradeep Paturkar (supra)**, the detention order was passed after 5 months and 8 days from the date of registration of the last case and more than 4 months of the proposal and

the Supreme Court held that the delay has not been satisfactorily explained, hence, the detention order came to be quashed. Mr. Sejpal relied upon the observations in the case of Pradeep Paturkar (*supra*) that unexplained delay whether short or long especially when the detenu has taken a specific plea of delay, vitiates the order of detention.

7. First of all in the present case, the last criminal activity of the detenu took place in 3rd week of June and the detention order is passed on 7.10.2016 i.e in 3 months and 3 weeks. Thus, it is seen that the detention order was passed 3 months and 3 weeks from the last criminal activity of the detenu which period is far less than the period in the case of Pradeep Paturkar. In the case of Pradeep Paturkar, the detention order was passed 5 months and 8 days from the date of registration of last case. Moreover, though the proposal in the present case is dated 20.7.2016, the detention order has been passed on 7.10.2016 i.e 2 months and 17 days from the

date of submission of the proposal. This period is also far less than the period in the case of Pradeep Paturkar where the detention order was passed after more than 4 months from submission of the proposal.

8. In the present case, the detaining authority has filed an affidavit explaining the delay in issuance of the detention order. It is stated therein that proposal dated 20.7.2016 from Dharavi Police Station was received by the office of the D.C.P., Zone - V, Mumbai on the same day i.e 20.7.2016. On 21.7.2016, there was holiday due to Sunday. After verifying the documents and particulars, it was sent to PCB, Crime Branch on 25.7.2016 by Outward No. 4858/2016. PCB received the same on the evening of 26.7.2016. Senior Inspector of Police of PCB scrutinized the same at their end and verified the proposal and all the documents from 26.7.2016 to 4.8.2016. On 31.7.2016, there was a Sunday. Learned APP submitted that as the compilation consisted of 373 pages, at the initial

stage, it would take some time for each department to scrutinize the papers. Thereafter in the affidavit, it is stated that on 5.8.2016, PCB forwarded the said proposal to ACP, Preventive Crime Branch and the same was received by ACP, Preventive Crime Branch, CID, Mumbai on 6.8.2016. Then on the very same day, after verifying the same, it was forwarded to DCP, Preventive Crime Branch, CID, Mumbai. As 7.8.2016 was a Sunday, same was received on 8.8.2016. The same was scrutinized. Thereafter, it was forwarded to the Additional Commissioner of Police and the same was received by the Additional Commissioner of Police, Preventive Crime Branch on 8.8.2016. The Additional Commissioner of Police forwarded the same to the Joint Commissioner of Police on the very same day i.e 8.8.2016. The Joint Commissioner of Police sent the proposal to the Additional Director of Public Prosecutor for obtaining legal opinion and it was received back on 12.8.2016. The Additional Director of Public Prosecutor opined that it was a fit case to consider the proposal. Then Joint Commissioner of

Police verified the documents and suggested some corrections on 16.8.2016. In between, there were public holidays from 13.8.2016 being 2nd Saturday, on 14.8.2016 being Sunday and on 15.8.2016 being Independence Day. Apart from that, the concerned Joint Commissioner of Police and other staff were also busy with other official work. After the suggested corrections were carried out, the Joint Commissioner of Police received the file on 19.8.2016. The same was scrutinized by him and finalized on 20.8.2016. On 21.8.2016, there was holiday being Sunday, therefore, the same was forwarded to the office of detaining authority on 22.8.2017. During the same period, the detaining authority had other proposals pending for issuance of detention order which were as under:-

Sr. No.	Police Station	P.D. Name	Date
1	Kanjurmarg	Mayur Shinde	14.07.2016
2	Bangur Nagar	Mohsin Javed	15.07.2016
3	Shivaji Nagar	Nisar @ Nigro	19.07.2016
4	Boriwali	Mandar Borkar	22.07.2016
5	Juhu	Alex @ Mariappa	25.07.2016
6	Dharavi	Krishna Godambe	26.07.2016
7	Kandiwali	Ramkisan Chouhan	23.09.2016

9. In his affidavit, the detaining authority has stated that after receipt of the proposal, on account of other proposals pending for issuance of detention order, simultaneously turn by turn, he has carefully gone through the proposals and approved the present proposal on 22.9.2016. The proposal of Dharavi Police Station was received by his office on 22.8.2016 and there was bandobast on account of Ganpati festival and Bakri Id between 5.9.2016 to 15.9.2016. The proposal was perused by him and he directed his subordinate officers to scrutinize the same. Accordingly, all the papers were placed again before the detaining authority on 22.9.2016

10. The detaining authority has further stated that on 22.9.2016, after going through the proposal and all the documents, he approved the same on 22.9.2016. Thereafter, he dictated the draft grounds of the detention. He asked the officer from PCB to prepare the translation of all the documents which were to be served on the detenu. The papers were

received back by the detaining authority on 27.9.2016. Some mistakes were found therein, hence, it was sent for correction. After the corrections were carried out, the papers were put up before the detaining authority on 30.9.2016. The detaining authority then went through the grounds of detention and compilation of the documents which were to be served to the detenu. Then he finalized the draft detention order on that day and asked the officer from PCB to prepare the final copy of the detention order. On 2.10.2016, it was holiday. The detention order was then put up before the detaining authority on 4.10.2016. Thereafter, the detaining authority went through all the papers simultaneously on 5 & 6.10.2016. On 7.10.2016, the detaining authority again scrutinized all the documents and finalized the grounds of detention and issued the order of detention on the very same day i.e 7.10.2016.

11. Learned counsel for the petitioner submitted that there are two pockets of delay. The first pocket is of 25 days

i.e after the incamera statements were verified on 27.6.2016 and the proposal was sent on 20.7.2016. As far as this delay is concerned, the affidavit of the sponsoring authority shows that in between the period after the last incamera statement was recorded and the proposal was sent, all the papers relating to the preventive action taken against the detenu i.e chapter cases and externment proceedings were obtained by the sponsoring authority. Thereafter, the papers relating to C.R. No. 530/2015, 15/2016 and LAC No. 58/2016 were collected and zeroxed. The papers relating to earlier offences were also collected. After collecting all the documents, seven sets were prepared. They were paginated and index was made. Final proposal was prepared and thereafter, the proposal was submitted on 20.7.2016. Thus, looking to the activities undertaken by the sponsoring authority to prepare the necessary sets of the documents, it cannot be said that the period of 25 days is inordinate. We are of the opinion that this period of 25 days has been satisfactorily explained.

12. Thereafter, learned counsel for the petitioner submitted that the period between 22.8.2016 to 22.9.2016 i.e the date the detaining authority received the proposal to the date the detaining authority approved the proposal has not been explained which delay would vitiate the order of detention. As far as this period is concerned, it has been explained by the detaining authority, as discussed by us, in foregoing paragraphs. The decision of Pradeep Paturkar on which reliance is placed by the learned counsel for the petitioner in relation to delay in issuance of the detention order had been considered by this Court in the decision dated 10.3.2010 in **Criminal Writ Petition No. 2090 of 1999** in the case of **Deepak Govind Murudkar**. In the case of Deepak Murudkar, it was held that the delay in issuance of detention order would be computed from the last date of in-camera statement and not from the date of last C.R. In that case, the delay was almost 10 months from the last C.R. and 2 months and 11 days from the proposal. However, the said

detention order was maintained.

13. As far as delay is concerned, the holidays i.e Sunday, public holidays and 2nd and 4th Saturday would have to be excluded. The Supreme Court in the case of **Noor Salaman Makani Vs. Union of India & Ors.** reported in **(1994) 1 SCC 381** observed that the delay is to be computed after excluding holidays. In any event, in Dharavi, there is huge population of Hindus and Muslims and as the festivals of Hindus and Muslims are celebrated during the said period, heavy bandobast has to be maintained. In any event, all over the city of Mumbai, during the period of Ganpati festival, vigilance is required to be maintained almost around the clock in order to control the traffic, crowd and to see that no untoward incident takes place, hence, during this period, the detaining authority would have no time at all to issue the order of detention. The detaining authority in his affidavit has stated that from 5.9.2016 to 15.9.2016 on account of Ganpati fesetival, there was heavy

bandobust.

14. As far as delay is concerned, the main issue is whether the live-link is snapped. This depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guide lines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinize whether the detaining authority has afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

15. The Supreme Court in the case of **Hemlata Kantilal Shah Vs. State of Maharashtra** reported in **(1981) 4 SCC 647 : 1982 SCC (Cri) 16** observed as under:-

"Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority."

16. Coming to the case in hand, the detention order was issued on 7.10.2016 i.e after 3 months and 12 days from the date when the last in-camera statement was recorded which was recorded on 25.6.2016 and after 2 months and 17 days from the submission of proposal i.e on 20.7.2016. Looking to the prejudicial activities of the detenu, we are of the opinion that the delay, if any, during this period which is unexplained, would not snap the live-link between the prejudicial activities of the detenu and the purpose of detention. In any event, we are of the opinion that the delay has been satisfactorily explained.

Thus, we find no merit in this ground.

17. In view of the above, we find no merit in this petition.

The petition is dismissed.

[REVATI MOHITE DERE, J.]

[SMT.V.K.TAHILRAMANI, J.]

Amberkar